

Inventor: KLINGLER  
Attorney Docket No. 41587.012502(346)  
S/N 10/760,658

***REMARKS***

***I. Phone Conference of August 10, 2005***

Applicant gratefully acknowledges the Examiner's participation in the phone conference of August 10, 2005 with counsel for Applicant, as well as the Examiner's courtesy review of proposed claim amendments resulting from the discussion of the phone conference.

***II. Amendment of Specification to Include Additional Priority Claim Information***

Due to a clerical error, the documents from which this application claims priority were not properly cited in the U.S. parent case 09/729,538 (now U.S. Patent 6,682,144). To correct this situation, Applicant herewith submits the above amendment to the specification as well as the certified priority document, German application 19825225 filed 5 June 1998 (now abandoned). This German application became the basis for PCT application EP99/03825 filed 2 June 1999, on which the U.S. parent of the present application is based.

Applicant refers the Examiner to the 9/9/03 Notice of Allowability in the U.S. parent application 09/729,538 in which the Examiner in that case stated "Acknowledgement is made of applicant's claim for foreign priority based on an application filed in Germany on 06 May 1998." Given the European method of designating dates in the "day/month/year" format this priority date would have been shown as "05/06/1998", which actually means "05 June 1998". Therefore the Examiner has previously acknowledged the priority status of this German application.

It is Applicant's understanding, based on reading of relevant sections of the MPEP and from discussions with US PTO personnel, that this issue regarding the claim of priority cannot be remedied with a Certificate of Correction or a Reissue Application. Applicant wishes to correct 2093009.05

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this issue through the enclosed amendment of this continuation application.

***III. Request for Continued Examination***

To expedite prosecution in this case Applicant is filing the instant RCE on the assumption that the subsequent action will be non-final. As stated in the MPEP, “it would not be proper to make final a first Office action in a continuing ... application where that application contains material which was presented in the earlier application after final rejection ... but was denied entry because (A) new issues were raised that required further consideration and/or search ... .” MPEP §706.07(b).

In the present case the Examiner stated in the Advisory Action of 9/15/05 that the proposed amendments raise issues that “would require further search and consideration of the lumbar support art.” Thus, given the Office practice cited above and the Examiner’s statement in the Advisory Action, Applicant expects that the next action in this case will be non-final.

***IV. Claim Rejections Under 35 USC § 112***

The Examiner has rejected claims 32-34 and 37-52 under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. However, in light of the claim amendments entered herein, these rejections are rendered moot.

***V. Claim Rejections Under 35 USC § 102(b)***

Claims 32-51 are rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,651,583 to Klingler et al. In light of the claim amendments entered herein, these rejections are rendered moot.

***VI. Claim Amendments***

Claims 35 and 37 have been amended to remove unnecessary elements.

Claims 32, 37, and 48 have been amended to clarify the vertical orientation of the flap portions. Specifically, the flap portions are described as being “attached to said lumbar support element by two connecting webs, said connecting webs forming a substantially horizontal pivoting axis.” (Claim 32).

Support for these amendments is manifest in the originally-filed specification. For example, in the second sentence of paragraph [0022] of the published application (Publ. no. US 2004/0178670), it is stated that “[t]he connecting webs 10 form for the panel 8 a kind of pivoting axis, arranged parallel to the edges 6 of the archable element member 5.” The edges 6 referred to in this passage are the top and bottom horizontal edges. Thus the pivoting axis, which is parallel to the horizontal edges 6, is also horizontal.

It is also clear that the above-quoted passage refers to the pivoting of the flaps, the flaps being referred to in the passage as panel 8. Panel 8 is made of two partial panels, an upper 11 and a lower 12 (third sentence of paragraph [0022]), which correspond to the “two oppositely oriented flaps” of the claims. Therefore, the amended claim element claiming “two oppositely-oriented flap portions attached to said lumbar support element by two connecting webs, said connecting webs forming a substantially horizontal axis on which said flap portions pivot” is completely supported by the original specification. While claim 32 explicitly refers to “two oppositely-oriented flap portions”, claims 37 and 48 are similar in that these latter two claims each contain an element calling for “at least two of said flap portions being disposed in opposite

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directions from one another" (claim 37) or "at least two of said flaps being disposed in opposite directions" (claim 48).

Finally, claims 35 and 48 have been amended to change the term "circumscribed" to "completely surrounded" as suggested by the Examiner during the aforementioned phone conference of August 10, 2005.

***VII. Conclusion***

Applicants respectfully submit that all of the independent and dependent claims are allowable over the prior art of record. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner finds that the application is unpatentable for any reason, Applicant hereby formally requests that the Examiner contact the undersigned by telephone at the number provided so that an interview may be scheduled.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

 10/31/05

By: Grant D. Kang, Reg. No. 37,651  
Husch & Eppenberger, LLC  
190 Carondelet Plaza  
St. Louis, MO 63105  
314-480-1640  
314-480-1505 FAX